

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: January 29, 2009

504747

In the Matter of LEE S.,
Alleged to be a Juvenile
Delinquent.

JOSEPH SLUZAR, as Broome County
Attorney,
Respondent;

MEMORANDUM AND ORDER

LEE S.,
Appellant.

Calendar Date: January 15, 2009

Before: Peters, J.P., Lahtinen, Kavanagh and Stein, JJ.

Cynthia Feathers, Saratoga Springs, for appellant.

Joseph Sluzar, County Attorney, Binghamton (Holly Zurenda-Cruz of counsel), for respondent.

Kavanagh, J.

Appeal from an order of the Family Court of Broome County (Pines, J.), entered March 24, 2008, which granted petitioner's application, in a proceeding pursuant to Family Ct Act article 3, to adjudicate respondent a juvenile delinquent.

After forcibly stealing a bicycle, respondent was charged with conduct which, if committed by an adult, would constitute the crime of robbery in the third degree. Respondent thereafter admitted to committing the crime of petit larceny in full satisfaction of the petition and was adjudicated a juvenile delinquent. Following a dispositional hearing, which extended

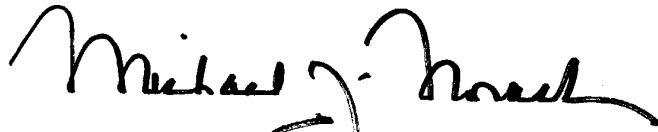
over two days and concluded on March 3, 2008, Family Court ordered respondent placed in the care and custody of the Broome County Department of Social Services for a period of one year. This appeal by respondent ensued.

Respondent correctly contends that Family Court failed to comply with the requirements of Family Ct Act § 321.3 (1) (c) (see Matter of Travis TT., 47 AD3d 1112, 1113 [2008]; Matter of Robert OO., 34 AD3d 1074, 1075 [2006]). At the time of his admission, Family Court merely instructed respondent that the court would "still have the authority to enter a new dispositional order which . . . could include placing [him] outside [of] the home." Respondent was not made aware of any other possible specific dispositional orders, "nor was he ever told the exact nature of [his] placement [outside of the home] or its possible duration" (Matter of Herbert RR., 214 AD2d 891, 892 [1995]; see Family Ct Act § 321.3 [1] [c]; Matter of Robert OO., 34 AD3d at 1075; Matter of Timothy M., 225 AD2d 915 [1996]). Insofar as the provisions of Family Ct Act § 321.3 (1) cannot be waived (see Matter of Travis TT., 47 AD3d at 1113; Matter of Robert OO., 34 AD3d at 1075), Family Court's order must be reversed and, since respondent's placement period has not expired, the matter is remitted to Family Court for further proceedings.

Peters, J.P., Lahtinen and Stein, JJ., concur.

ORDERED that the order is reversed, on the law, without costs, and matter remitted to the Family Court of Broome County for further proceedings not inconsistent with this Court's decision.

ENTER:



Michael J. Novack
Clerk of the Court